

Senate Bill No. 1040

Passed the Senate May 12, 2008

Secretary of the Senate

Passed the Assembly April 1, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 41007, 41009, 41011, 41016, 41020, 41025, 41030, 41031, 41046, 41050 of, and to add Sections 41016.5, 41019.5, and 41152 to, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, Kehoe. Telecommunications: Emergency Telephone Users Surcharge Act.

Existing provisions of the Warren-911-Emergency Assistance Act establish the number “911” as the primary emergency telephone number of use in the state. The existing Emergency Telephone Users Surcharge Act (“911” surcharge act) generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service that is imposed at a percentage rate, not less than 0.5% nor more than 0.75% as annually estimated to provide revenues sufficient to fund “911” emergency telephone system costs for the current fiscal year. Surcharge amounts are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the “911” emergency telephone number system. Existing law defines a “service supplier,” for purposes of the “911” surcharge act, as meaning a person supplying intrastate telephone communication services, as defined, pursuant to California intrastate tariffs to any service user, as defined, in the state and includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission has eliminated the requirement for filing an intrastate tariff. Existing law also defines a “service user” as meaning any person using intrastate telephone communication services in this state who is required to pay a surcharge under the act.

This bill would expand the definition of a “service supplier,” for purposes of the “911” surcharge act, to include any person

supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1. This bill would also expand the definition of a “service user” to include any person using VoIP service in this state who is required to pay a surcharge under the act. This bill would specify that the “911” surcharge act applies to VoIP service, as defined, commencing on January 1, 2009, but would provide that the surcharge does not apply to customers whose primary place of using the service is outside the state. This bill would also specify that charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method, as specified.

This bill would state that it is not the intent of the Legislature to regulate telephone quality communication utilizing VoIP, as defined, but rather its sole purpose is to ensure that all forms of telephonic quality communication that connect to the “911” emergency system contribute to the State Emergency Telephone Number Account. The bill would also make conforming changes to other provisions of the act to include VoIP service.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 41007 of the Revenue and Taxation Code is amended to read:

41007. (a) “Service supplier” shall mean both of the following:

(1) Any person supplying intrastate telephone communication services to any service user in this state pursuant to California intrastate tariffs and providing access to the “911” emergency system by utilizing the digits 9-1-1.

(2) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the “911” emergency system by utilizing the digits 9-1-1.

(b) On and after January 1, 1988, “service supplier” also includes any person supplying intrastate telephone communications services for whom the Public Utilities Commission, by rule or order,

modifies or eliminates the requirement for that person to prepare and file California intrastate tariffs.

SEC. 2. Section 41009 of the Revenue and Taxation Code is amended to read:

41009. “Service user” means any person using intrastate telephone communication services or VoIP service in this state who is required to pay a surcharge under the provisions of this part.

SEC. 3. Section 41011 of the Revenue and Taxation Code is amended to read:

41011. (a) “Charges for services” means all charges billed by a service supplier to a service user for intrastate telephone communications services and shall mean local telephone service and include monthly service flat-rate charges for usage, message unit charges and shall mean toll charges, and include intrastate wide area telephone service charges and also means all charges billed by a service supplier to a service user for VoIP service.

(b) (1) “Charges for services” shall not include any tax imposed by the United States or by any charter city, charges for service paid by inserting coins in a public coin-operated telephone, and shall not apply to amounts billed to nonsubscribers for coin shortages. Where a coin-operated telephone service is furnished for a guarantee or other periodic amount, such amount is subject to the surcharge imposed by this part.

(2) “Charges for services” shall not include charges for intrastate toll calls where bills for such calls originate out of California.

(3) “Charges for services” shall not include charges for any nonrecurring, installation, service connection or one-time charge for service or directory advertising, and shall not include private communication service charges, charges for other than communications service, or any charge made by a hotel or motel for service rendered in placing calls for its guests regardless of how such hotel or motel charge is denominated or characterized by an applicable tariff of the Public Utilities Commission of this state.

(4) “Charges for services” shall not include charges for basic exchange line service for lifeline services.

SEC. 4. Section 41016 of the Revenue and Taxation Code is amended to read:

41016. “Toll telephone service” means either of the following:

(a) A telephonic quality communication that meets both of the following requirements:

(1) There is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication.

(2) The charge is paid within the United States.

(b) A service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

SEC. 5. Section 41016.5 is added to the Revenue and Taxation Code, to read:

41016.5. (a) “VoIP service” means any service that satisfies the requirements set forth in paragraph (1) and (2).

(1) Does all of the following:

(A) Enables real-time, two-way voice communication that originates from and terminates to the user’s location using Internet Protocol (IP) or any successor protocol.

(B) Requires a broadband connection from the user’s location.

(C) Permits users, generally, to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(2) Does at least one of the following:

(A) Requires Internet protocol-compatible customer premises equipment (CPE).

(B) When necessary, is converted to or from transmission control protocol (TCP)/IP by the service user’s service supplier before or after being switched by the public switched telephone network.

(C) Is a service that the Federal Communications Commission (FCC) has affirmatively required to provide 911 or E911 service.

(b) This definition shall only apply to this part.

SEC. 6. Section 41019.5 is added to the Revenue and Taxation Code, to read:

41019.5. (a) It is the intent of the Legislature that telephone quality communication utilizing VoIP shall not be regulated by the enactment of Senate Bill 1040 of the 2007–08 Regular Session. The sole purpose of this act is to ensure that all forms of telephonic quality communications that connect to the “911” emergency system contribute to the State Emergency Telephone Number Account and that this act may not be used by a court or administrative body for any purpose other than to interpret and apply this part.

(b) For purposes of this section only, “VoIP” means any service that:

(1) Enables real-time or two-way voice communication that originates or terminates from the user’s location using IP or any successor protocol.

(2) Uses a broadband connection from the user’s location, including any service that permits users, generally, to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

SEC. 7. Section 41020 of the Revenue and Taxation Code is amended to read:

41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:

(1) Intrastate telephone communication service in this state commencing on July 1, 1977.

(2) VoIP service that provides access to the “911” emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.

(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:

(A) Books and records kept in the regular course of business.

(B) Traffic or call pattern studies representative of the service supplier’s business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier’s

contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 through December 31, inclusive, of the next succeeding calendar year for purposes of this method. At such time as the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier's determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier's choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for such services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

(d) The surcharge shall be paid by the service user as hereinafter provided.

(e) The surcharge imposed shall not apply to either of the following:

(1) In accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252), which is incorporated herein by reference, to any charges for mobile telecommunications services billed to a customer where those services are provided, or deemed provided, to a customer whose place of primary use is outside this state. Mobile telecommunications services shall be deemed provided by a customer's home service provider to the customer if those services are provided in a taxing jurisdiction to the customer, and the charges for those services are billed by or for the customer's home service provider.

(2) To any charges for VoIP service billed to a customer where those services are provided to a customer whose place of primary use of VoIP service is outside this state.

(f) For purposes of this section:

(1) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider, regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(2) "Customer" means (A) the person or entity that contracts with the home service provider for mobile telecommunications services, or with a VoIP service provider for VoIP service, or (B) if the end user of mobile telecommunications services or VoIP service is not the contracting party, the end user of the mobile telecommunications service or VoIP service. This paragraph applies only for the purpose of determining the place of primary use. The term "customer" does not include (A) a reseller of mobile telecommunications service or VoIP communication service, or (B) a serving carrier under an arrangement to serve the mobile customer outside the home service provider's licensed service area.

(3) "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(4) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(5) “Mobile telecommunications service” means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999.

(6) “Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service or VoIP service primarily occurs, that must be:

(A) The residential street address or the primary business street address of the customer.

(B) With respect to mobile telecommunications service, within the licensed service area of the home service provider.

(7) (A) “Reseller” means a provider who purchases telecommunications services or VoIP service from another telecommunications service provider or VoIP service and then resells the services, or uses the services as a component part of, or integrates the purchased services into, a mobile telecommunications service or VoIP service.

(B) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(8) “Serving carrier” means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider’s or reseller’s licensed area.

(9) “Taxing jurisdiction” means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(10) “VoIP service provider” means that provider of VoIP service with whom the end user customer contracts for the provision of VoIP services for the customer’s own use and not for resale.

(g) The amendments made to this section by the act that added this subdivision shall become operative upon the enactment of that act, except that subdivisions (a) and (b) of this section, as amended, shall become operative on January 1, 2009.

SEC. 8. Section 41025 of the Revenue and Taxation Code is amended to read:

41025. If a bill is rendered to persons using intrastate telephone services or VoIP service, the amount on which the surcharge with respect to such services shall be based shall be the sum of all charges for such services included in the bill; except that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the surcharge, then the amount on which the surcharge with respect to each such group shall be based shall be the sum of all items within that group, and the surcharge on the remaining items not included in any such group shall be based on the charge for each item separately.

SEC. 9. Section 41030 of the Revenue and Taxation Code is amended to read:

41030. The Department of General Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Department of General Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but in no event shall such surcharge rate in any year be greater than three-quarters of 1 percent nor less than one-half of 1 percent.

SEC. 10. Section 41031 of the Revenue and Taxation Code is amended to read:

41031. The Department of General Services shall make its determination of such surcharge rate each year no later than October 1 and shall notify the board of the new rate, which shall be fixed by the board to be effective with respect to charges made for intrastate telephone communication services and VoIP service on or after January 1 of the next succeeding calendar year.

SEC. 11. Section 41046 of the Revenue and Taxation Code is amended to read:

41046. There are exempt from the surcharge charges for intrastate telephone communication services and VoIP service

which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

SEC. 12. Section 41050 of the Revenue and Taxation Code is amended to read:

41050. The surcharge imposed by Section 41020 attaches at the time charges for the intrastate telephone communication services and VoIP service are billed by the service supplier to the service user and shall be paid by the service user when paying for such services.

SEC. 13. Section 41152 is added to the Revenue and Taxation Code, to read:

41152. The Legislature finds and declares all of the following:

(a) Access to emergency telephone service has been a longstanding goal of the state.

(b) The Emergency Telephone Users Surcharge Act remains an important means for making emergency telephone service available to every person in this state.

(c) Every reasonable means should be employed by telephone corporations and every provider of telephone quality communication to ensure that every person using their service is informed of and is afforded the opportunity to use emergency telephone service, regardless of the means by which emergency telephone calls are placed.

(d) The furnishing of emergency telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation and every provider of telephone quality communication in a way that is equitable, nondiscriminatory, and competitively neutral.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the financial stability of the Emergency Telephone Users Surcharge Act, it is necessary that this act take effect immediately.

Approved _____, 2008

Governor